

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 10/5/2023
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X		
FELIX A PABON,	:	
	:	
Plaintiff,	:	
-against-	:	
	:	23-CV-8276 (VEC)
	:	
PENSKE LOGISTICS INC. COMPONENT	:	<u>ORDER</u>
CARRIER LLC, JOHNS MANVILLE, AND	:	
JAMES C LAWALL	:	
	:	
Defendant.	:	
-----X		

VALERIE CAPRONI, United States District Judge:

WHEREAS on September 19, 2023, Defendants filed a Notice of Removal in the action initially filed by Felix A. Pabon in the Supreme Court of the State of New York, County of Bronx on July 27, 2023, Dkt. 1;

WHEREAS Defendants allege that this Court has subject matter jurisdiction based on diversity, *id.* ¶ 18;

WHEREAS the Notice of Removal alleges that Defendant Penske Truck Leasing Co. L.P. i/s/h/a Penske Logistics Inc. Component Carrier, LLC is a limited partnership organized and existing under the laws of the State of Delaware and has a principal place of business in Berks County, Pennsylvania, *see id.* ¶ 10;

WHEREAS neither the Complaint nor the Notice of Removal make any allegations as to the citizenship of the members of said Defendant;

WHEREAS on September 20, 2023, the Court ordered Defendants to file an amended notice of removal that cures the deficiency by October 4, 2023, Dkt. 3; and

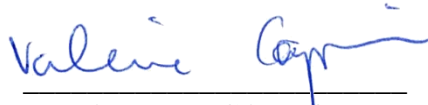
WHEREAS on October 4, 2023, the parties instead filed a proposed stipulation of discontinuance as to Defendant Penske Truck Leasing Co. L.P. i/s/h/a Penske Logistics Inc. Component Carrier, LLC, which the Court construes as a stipulation of dismissal;

IT IS HEREBY ORDERED that the Clerk of Court is respectfully directed to terminate Penske Logistics Inc. Component Carrier, LLC as a Defendant in this action.

IT IS FURTHER ORDERED that the Court has subject matter jurisdiction because, although “the existence of federal subject matter jurisdiction over an action removed from state court to federal court is normally to be determined as of the time of removal, . . . the elimination of non-diverse defendants prior to judgment saves the action from dismissal for lack of jurisdiction.” *Brown v. Eli Lilly & Co.*, 654 F.3d 347, 357 (2d Cir. 2011) (internal quotation and citation omitted).

SO ORDERED.

Date: October 5, 2023
New York, New York



VALERIE CAPRONI
United States District Judge